



Canadian Forces Grievance Board
Comité des griefs des Forces canadiennes



CANADIAN FORCES GRIEVANCE BOARD
ANNUAL REPORT 2002

Canada



March 31, 2003

The Honourable John McCallum, P.C., B.A., Ph.D.
Minister of National Defence
National Defence Headquarters
MGen Georges R. Pearkes Building
101 Colonel By Drive
Ottawa, Ontario
K1A 0K2

Dear Minister:

Pursuant to section 29.28(1) of the *National Defence Act*, I hereby submit the 2002 annual report on the activities of the Canadian Forces Grievance Board for tabling in Parliament.

Yours truly,

A handwritten signature in black ink, appearing to read "Paul-André Massé". The signature is fluid and cursive, with a small dot at the end.

Paul-André Massé
Chairperson

Cover photo courtesy of the Canadian Forces
and photographer MCpl. Brian Walsh



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MESSAGE

FROM THE CHAIRPERSON



When the Canadian Forces Grievance Board (CFGB) began operations two and a half years ago, I expected the benefits of the Board's work to extend beyond the fair, impartial and transparent review of individual grievances filed by members of the Canadian Forces (CF). In this year's annual report, I am pleased to demonstrate the broader contribution the Board can make to improve staff relations in the military.

In 2003 the *National Defence Act* will be reviewed, as planned, five years after it was last revised and amended in 1998. The Board has had only half that time to exhibit its contribution to an improved administrative justice system within the military, however, we are seeing the tangible benefits of our work. As a result of the Board's findings and recommendations, in the past year the Chief of the Defence Staff (CDS) has asked relevant authorities to examine systemic issues on matters concerning conditions of work in the CF and procedural fairness in the grievance review process.

Despite the Board's relatively short existence, there can be no doubt that the decision made by Parliament to create the Board in 1998 was well reasoned. Having an outside body review military grievances demonstrates the government's desire to improve the overall administration of justice within the military and constitutes a major change in labor relations within a military context. Members of the military are treated in the most fair and equitable manner possible when their grievances are reviewed by a completely external and independent organization.

Prior to the Board's existence, the review of military grievances was not perceived to be impartial. Given that there are no unions or employee associations in the CF, the Board ensures military personnel are considered fairly when reviewing grievances, carefully balancing their rights against the legal and operational requirements of the CF. When the Board sends its findings and recommendations to the CDS, the grievor receives a copy at the same time, making the review process fully transparent; further evidence of its impartiality in the review process.

When a new organization starts out, in addition to the challenges faced in establishing all facets of a sound operating structure, it has to go through a steep learning curve as it acquires and builds upon experience gained, before it can operate in a smooth functioning manner. In this respect, the Board is no different from other



new organizations. It was recognized from its inception that it would take approximately three years to arrive at the desired steady state of operation. However, there is no one point where any organization can truly say it exists in its most perfect form. The Board's continuous learning and improvement culture will ensure its sustained relevance into the future.

The CFGB has in place a sound grievance review process that ensures quality findings and recommendations are submitted to the CDS. Our current challenge is to complete the review of grievances more expeditiously. We are not alone in this respect. Everyone involved in the CF review process has to ensure that grievances are reviewed as promptly as the circumstances and the considerations of fairness permit. We are striving, with our administrative collaborators in the CF grievance review process, to improve the timeliness of reviews. To this end, I will be making a request for an increase in the Board's annual reference level, so that the Board can hire additional staff, in order to reduce the number of outstanding grievances in our inventory of cases and to halt a growing backlog.

At the very beginning, the Board established a strategy and three-year operational plan aimed at achieving its long-term results. Our strategies were well chosen and they remain the beacons that guide us today. Sound performance management, professional development and continuous learning, knowledge management, effective internal and external communications and strong leadership at all levels in the organization will allow us to carry out our mandate.

I am an ardent supporter of the government's modern comptrollership initiative and this last year the Board's management team developed a management improvement action plan, consistent with this initiative. The planned actions will better integrate financial and non-financial performance information, to ensure effective stewardship of the resources entrusted to us, and will harness those resources in a greater focus on results for Canadians.

I take this opportunity to thank all those external and internal to the organization who assisted the Board in its establishment; who worked diligently with fervent commitment to bring us to where we are today and who helped make us stronger and better prepared to face the future.

In our 2000 annual report, I made a statement to the effect that our goal was to be an instrument of change within the military's administrative justice system, contributing to improved staff relations throughout the CF. After reading this year's report, I think you will agree that we are firmly on track in realizing that goal.

Paul-André Massé
Chairperson, Canadian Forces Grievance Board

CHAPTER 1

THE BOARD TWO YEARS LATER

Introduction

The creation of the Canadian Forces Grievance Board (CFGB) is the result of the Government of Canada's desire to put in place the most efficient, transparent and humane grievance process possible to contribute to improving conditions of work for members of the Canadian Forces (CF).

The Board was created on 1 March 2000, in accordance with legislation enacted in December 1998 that contained amendments to the *National Defence Act* (NDA). A portion of these amendments dealt with the grievance process, which were the result of several studies and inquiries into broader issues of military justice. The purpose behind these amendments, and the fundamental reason for creating the Board, was to create an organization that would play a distinctive role with regard to the Canadian Forces' grievance review process in support of the government's public policy values of equity, transparency and fairness for all.

There are no unions or employee associations in the military, therefore, as part of the grievance review process, the Board ensures that the rights of military personnel are considered fairly and impartially. These amendments to the Act were aimed at making the whole grievance review process shorter and simpler for members of the CF, by removing it from the chain of command, and by seeking external input for the resolution of certain grievances, as defined in Chapter 7.12 of the *Queen's Regulations and Orders* (QR&O).

The Board officially began operations on 15 June 2000, when it received its regulatory authority; it is an administrative tribunal with powers of a quasi-judicial nature. The Board is external to and independent of the CF and the Department of National Defence (DND), and only the Board has the statutory mandate to submit findings and recommendations to the Chief of the Defence Staff (CDS) under the NDA.

The Board conducts objective and transparent reviews of grievances with due respect to fairness and equity for each individual member of the CF, regardless of rank or position. It ensures that the rights of military personnel are considered fairly throughout the process and its Members act independently of the CF, in the best interest of both parties concerned, balancing the rights of the grievor versus the legal and operational requirements of the CF.

The importance of the Board's role is highlighted by the fact that the CF is the single largest employer nationally (approximately 80,000 members including the Reserves), with operations in Canada and abroad.



This year the Board looks back on its activities and accomplishments for 2002, as well as its various challenges, and assesses its contribution to the broader grievance review process and to the CF in general.

The Grievance Review Process Today

A Streamlined Process

The CFGB is part of a broader formalized and streamlined grievance process put in place to deal more efficiently with formal complaints by its members. Borne out of the increased dissatisfaction among CF members with the former process, the Canadian Forces Streamlined Grievance Process began in June 2000.

The most important changes effected by this new streamlined process are as follows: clearer definitions on the right to submit a grievance; what constitutes a grievance; a reduction in the levels where grievances can be determined; establishing the CDS as the final redress authority and the creation of the CFGB.

The Board represents the impartial and independent second level review of the two level grievance review process. The findings and recommendations it issues are not only based in law but form precedents that have an impact on future grievance reviews. The Board issues findings and recommendations that help implement systemic change within the CF, ensuring that members are ultimately treated in a fairer and more equitable manner.

As a new organization and a key player in the grievance process' evolution, the last two and a half years have proven to be invaluable to the Board's organizational development and business strategy. But as with any process, the need for improvement and the requirement to make adjustments are an on-going exercise. To date, much of what the Board has learned has been systematically funnelled into three key areas: increased procedural efficiency, the establishment of principles and precedents, and the maintenance of quality findings and recommendations.

From the time of the Board's first Report on Plans and Priorities in 2001, management recognized that it would take three years to fully establish its operations. Operations have improved since June 2000 and the Board has now arrived at an internal process that ensures a more efficient treatment of grievances; three important developments have been instrumental in this respect: an improved intake system, an electronic case management system and a series of internal precedents.

As a continuous learning organization, the Board benefits in an on-going way from the experience and knowledge it has gained, as shown in the following examples:

1) Improved Intake Process

The Board recognizes the invaluable contribution of an experienced registrar. The recent addition of an intake officer has further helped to improve the intake process; both of these key positions are integrated at the front end of the process, allowing substantial time to be saved in processing files.

Once the registrar has received a grievance file at the Board, the intake officer reviews and evaluates it according to key elements: whether it was sent to the Board under the proper authority, whether it is within the Board's jurisdiction and whether all the necessary supporting documentation is in the file. This intake process expedites the grievance to the proper authority or to the proper level of review quickly; and the initial assessment at the outset also contributes to a more expeditious and informal process.

The intake process is the point where legal counsel and the grievance officer are assigned to the case. The intake officer summarizes the grievance and appends any precedent cases and other pertinent materials to the file so that the research process is shortened for the grievance officers.

The intake process also provides the opportunity for a grievance file to be evaluated according to whether or not it could be resolved by another means of redress. In the autumn of 2002, the Board began a pilot project called *Preliminary Neutral Assessment* (PNA). PNA is designed to be a help parties involved in a dispute by offering them an impartial and informed opinion concerning the merits of their respective positions. This approach has similarities with a group of techniques commonly referred to as Alternative Dispute Resolution (ADR); certain adjustments have been made, however, to bring it into line with the unique environment and context of the Canadian Forces.

Of 20 files that were originally identified for the pilot, 18 grievances from 14 separate grievors were retained, all of which were accepted by the CDS' designated representative as having PNA potential. Following a series of negotiations, seven grievances, including five from a single grievor, were withdrawn. Of the 11 remaining files that were put forward, the CDS approved the Board's proposed resolution for 10 of the grievances. At the time of printing, a resolution of the outstanding grievance had yet to be determined.

It should be noted that this approach does not prevent the Board from working with DND's Conflict Management Program, including their network of Dispute Resolution Centres (DRCs), on cases that could be resolved by mediation. The end date for the pilot is March 2003 and the Board will follow up with an evaluation to determine its merit.



2) Electronic Case Management System

The Board has also refined a fully operational electronic case management system that tracks the cases throughout the review process. This system is a crucial tool for collaboration and information sharing among Board staff. By enabling authorized staff to track, monitor and manage grievance cases, the status of any given file is immediately accessible, and redundant research is eliminated. The system also allows for comparisons, analyses of trends, and incorporates all past cases the Board has reviewed so that precedents and supporting documentation are readily available.

As processes change and new requirements are identified, the system will be adapted accordingly. The system also allows the Board's managers to make decisions based on integrated financial and non-financial performance information. This knowledge enabling technology will assist the Board in its strategic planning and decision-making by allowing case and cost analyses, both equally important in resource allocation decisions.

3) Internal Precedents

The Board is now at a stage where an inventory of internal precedents has been established. Integral to the aforementioned improvements, precedents form the basis on which future decisions could possibly be made. The same is true for other administrative tribunals. The Board now benefits from its own library of cases and internal precedents. It takes them into consideration in the review of subsequent grievances, thereby saving valuable time in research and analysis.

The Board is nonetheless mindful that new grievances may present similar issues differently or may raise new issues that have never been dealt with before. So while the Board benefits from the consultation of precedents, it treats every grievance individually. Now when the Board receives a grievance, grievance officers can search the database of past cases for similarities in context, facts and issues, which in turn allows them to proceed more quickly.

Impact of the Board's Work on the CF

Recommendations for Systemic Change

In addition to the internal precedents used by the Board in its analysis of grievances, there are cases the Board reviews that establish precedents within the broader context of the CF. The Board has reviewed cases addressing a number of issues, including entitlement to medical care, suspension of a grievance, and relocation, where the issues addressed affected a greater number of people than the individual grievor. As a result, the findings and recommendations issued by the Board have created precedents that can influence for the better the way in which cases relating to these issues will be dealt with in the future.

When the Board does its work, the underlying causes of grievances have to be looked at in order to propose changes aimed at preventing the recurrence of similar grievances. Future decisions affecting the CF may very well take into account the precedents now being established by the Board. This makes it essential that the Board take the time necessary to ensure that its findings and recommendations are fully explained in writing and understandable to all parties. Strong and convincing reasoning in the Board's findings and recommendations can lead to institutional changes that will help improve labour relations within the military context.

As a result of the review of individual grievances, the Board has issued findings and recommendations that propose changes to CF regulations and policies. The Board has the authority to recommend that regulations and/or policies be reviewed and changed or clarified so as to ensure more equitable treatment to all members of the CF.

A report on systemic issues that the CDS has asked DND authorities to examine in 2002, based on the Board's findings and recommendations, is provided in Chapter 2 of this report.

Administrative Collaboration

The Board is a completely independent, quasi-judicial organization, whose relationship with the Canadian Forces is one that is based in the legal requirements set out in the Act that governs them both. It is important that a separation be seen to exist between the two, not only organizationally, but also in fact.

However, the Board does not work in isolation and, ultimately what it has learned during the past two and half years, it is sharing with other organizations. The Board therefore maintains professional ties with the Judge Advocate General (JAG), the Director, CF Grievance Administration (DCFGA), the CF Legal Advisor (CFLA), the Conflict Management Program (CMP) and Dispute Resolution Centre (DRC), the Military Police Complaints Commission (MPCC), and the DND and CF Office of the Ombudsman. By creating a network of contacts with these organizations, as well as working in a cooperative fashion to share information, the Board has an opportunity to both learn about and share best practices.

An example of sharing best practices came last 12 September 2002, when the Tri-Service Act Team (TSAT), from Great Britain, visited the Board. The organized tour came to Ottawa as part of an expedition to learn more about Canada's military and its justice system. The team had the opportunity to meet with the CFGB, at which time the Vice-Chair provided a general overview presentation on the organization, its relationship with DND, and its role within the CF grievance process.

The Quality of the Board's Findings and Recommendations





From left to right: Ground Capt Ross Paterson, Capt Peter Crabtree, Col Cecilia Miskelly and Mr. David Woodhead from the TSAT, CFGB Vice-Chair Diane Laurin, JAG Lt(N) Mario Paillé and CFGB Legal Services Director, Jacques Lavoie.

The Board brings to bear the full weight of the related laws and jurisprudence when submitting its findings and recommendations to the CDS. When the Board Members make a recommendation to the CDS on whether to grant or deny the substance of a grievance, in addition to providing their findings, they often make other recommendations concerning either broader systemic issues and/or secondary issues that were identified, in addition to the main point of contention in the grievance. Of all the 61 findings and recommendations on grievances the CDS had adjudicated, up to December 2002, he supported 59 and partially supported two of the Board's recommendations.

More notably, as of 31 December 2002, for every case on which the CDS had adjudicated, he agreed with all of the Board's recommendations on whether to grant or deny the grievance.

The quality of the findings and recommendations depends on the ability of the Board to collect and analyze information in light of the development of labour law within a military context. The fact that up until the end of 2002, the CDS agreed with all of the Board's recommendations regarding the substance of the grievances, and he supported the majority of its findings and recommendations, is a positive reflection of the work of its Members and staff, all of whom take pride in fulfilling the Board's mandate.

Major Challenges

Timeliness of Reviews

A major challenge for the Board was to arrive at its anticipated steady state of operations. Two and a half years is a relatively short time in which to establish an effective operation in a completely new government organization. However, the Board is now at the tail end of finalizing all facets of its organization building process and is at a stage where it is reaping the rewards resulting from the time and resources it has invested. Thus, while at the outset grievance reviews were not completed as quickly as had been aspired to, the Board is becoming more and more efficient at carrying out the work it is mandated to do.

In accordance with the NDA, the Board is to conduct its reviews expeditiously, yet fairly, in order to ensure equitable treatment of all parties concerned in an individual grievance. However, unlike other Government of Canada employees, the members of the military do not have unions or associations to represent them. As a result, balancing in a fair manner the rights of the members of the military versus the legal and operational requirements of the CF, places multiple demands on the Board's time, which in turn substantially increases the level of effort required. That being said, the Board continues to make every effort to improve the timeliness of grievance reviews.

Certain factors outside the Board's control can affect the swift review of grievances. For example, some cases can be quite complex, involving a great deal of research and analysis and time spent dealing with the parties involved. One grievance alone may incorporate several issues, numerous allegations and many points of redress. In some cases the magnitude of the documentation provided by the parties requires the Board to expend more time and resources than usual. The time required to review a grievance may also be affected by the haste in which parties provide relevant information and the Board must allow reasonable time for this to occur, in keeping with the rules of disclosure. And finally, depending on its complexity, the age of a grievance also represents a challenge, making it difficult to gather information and verify facts.

Implementing a sound case management process and procedures also affected the expeditiousness of reviews. This formed an additional challenge since the Board was a new organization and one of its prime objectives was to create a climate of confidence in its role. However, as a result of the time invested at the outset, the Board is now able to do its work more efficiently while continuing to submit quality findings and recommendations on grievances to the CDS. Also, since the Board looks at the underlying causes of grievances in order to propose changes aimed at preventing the recurrence of similar grievances in future, this will likely result in longer-term efficiency, while contributing to improved staff relations within the military.

Staff Recruitment and Retention



Cases received by the Board are complex, rarely easy to resolve, and involve much research, and analysis by grievance officers and legal advisors, and deliberation by Board Members. The organization requires highly qualified staff in its particular field of specialization; however, finding and retaining expert staff proved to be more of a challenge than had been anticipated. The majority of candidates desired permanent positions yet the Board could not provide long-term guarantees until it had completed its staffing processes and this had an impact on staff retention. Consequently, the Board had to substantially rely on outside resources, i.e. contract personnel, as a temporary measure to accomplish all the work that had to be done.

This past year the Board completed the competitive staffing process for grievance officers allowing it to hire from a list of qualified candidates to fill a portion of its positions. In its 2003-04 Report on Plans and Priorities (http://www.cfgb-cgfc.gc.ca/publications/index_e.html), the Board highlighted the need to increase its present budget base in order to be able to continue its work into the future. When funding becomes available and the Board is able to offer additional indeterminate status positions, it will hire from its established list of qualified personnel.

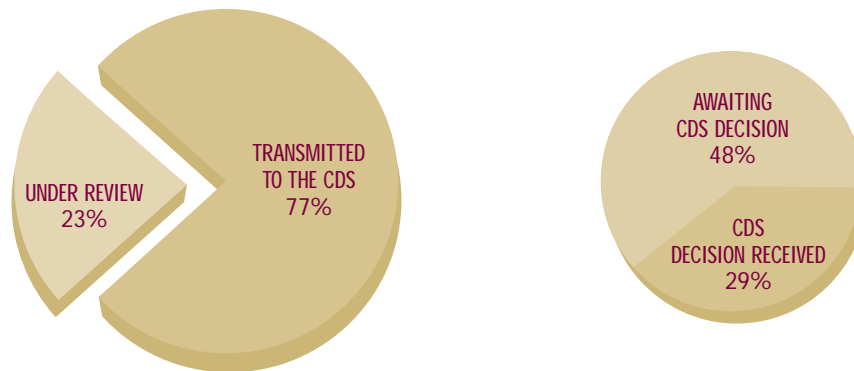
Grievances Predating June 2000

Since its inception the Board undertook to issue findings and recommendations on both new grievances received at the Board and those grievances outstanding from the previous system¹. In this respect, the Board was overly optimistic in its 2001 predictions²; the Board anticipated finishing reviewing grievances from the former system by the end of fiscal 2001-02, provided they were all received by 1 April 2001. To date, not all outstanding grievances have been completed, but the case inventory is significantly diminishing. The total number of cases at 1 April 2001 was 205 of which 158 have been completed and 47 remain under review.

¹ Grievances that were being reviewed at different levels in the Canadian Forces or were awaiting a decision by the CDS at the time the amendments to the *National Defence Act* came into force.

² 2001-02 Report on Plans and Priorities and CFGB Annual Report 2000

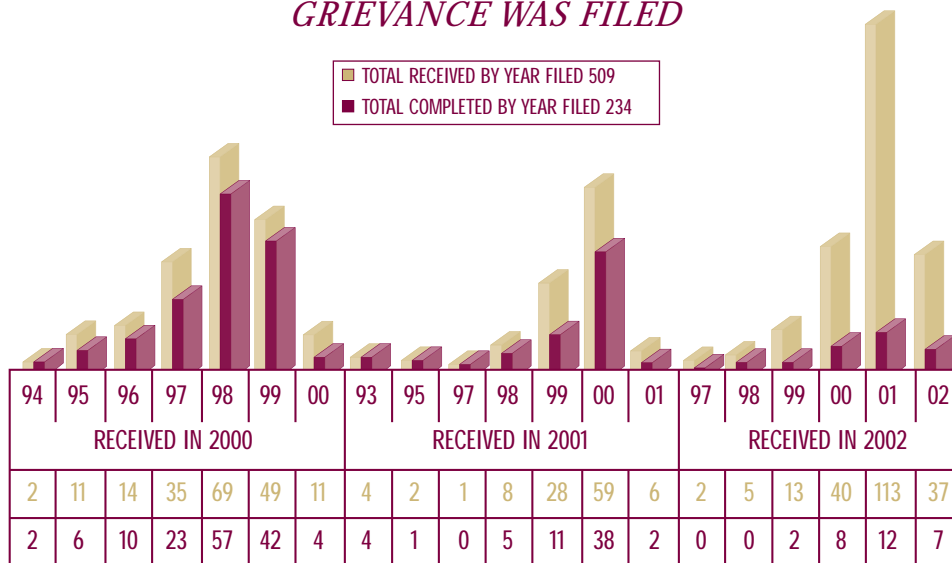
**STATUS OF CASES FROM THE FORMER SYSTEM
RECEIVED TO 1 APRIL 2001**



Files Under Review	47
Awaiting CDS Decision	98
CDS Decision Received	60
TOTAL	205

Complicating the situation with respect to outstanding grievances is the fact that the Board continues to receive cases, as shown below, that were filed prior to when the Board began operations in June 2000 (see following chart), and it cannot predict if and when more of these will come. Still having to work on grievances that were filed during the time that the former review system was in place delays the Board from working on more current grievances.

**TOTAL RECEIVED AND COMPLETED BY YEAR
GRIEVANCE WAS FILED**



Determining Grievance Priorities

When it receives grievances, the Canadian Forces Grievance Board has to assess the priority to give to each case. Generally the Board gives priority to the longest outstanding cases, however, the reality is that some cases may require a review without delay. The Board may review grievance files that involve for example: a grievor about to be released from the Forces; a case involving a critical health situation; a situation that may have a major impact on a person's career or reputation or; a situation resulting in significant financial hardship for the grievor. As a result, the Board has to ensure that in the interests of the grievor and all concerned, individual cases are considered in light of the special circumstances that may warrant a more expeditious review.

Differentiating and Communicating the Board's Role

The Board recognizes that a fundamental challenge it has faced since 2000 is that of effective communication about its role within the military's grievance system. On several occasions, its role and responsibilities have been confused with those of other administrative bodies, resulting in frustration for some CF members.

For example, a few CF members have lodged complaints with the DND/CF Ombudsman concerning the time being taken to complete their particular grievance reviews in the formal process. A Ministerial Directive that applies to employees of DND and members of the CF states that the Ombudsman may review the grievance review process only to ensure that the individual or individuals are treated in a fair and equitable manner. The Board, however, was created as an institution independent of both the DND and the CF, specifically to ensure the fair and equitable review of military grievances. As a quasi-judicial administrative tribunal mandated to review CF grievances, the Board's very reason for existence is so that members of the CF will be treated in an impartial manner.

It does not appear to be well understood among some interested parties in the grievance process that the Ombudsman's office cannot intervene in a grievance that is before the Board or that the CFGB cannot disclose information contained in a grievance file under its review to a third party. If the Ombudsman were allowed to intercede in an individual grievance, not only would this constitute a duplication of involvement in the review process but also such an intervention would contravene the Board's very independence since the Ombudsman reports to the Minister of National Defence. One of the major changes in the 1998 NDA amendments was to remove the Minister's involvement in individual grievances.

The foregoing is one example of the communications challenge faced by the Board in

differentiating its role from others involved in CF staff relations matters. To address this communications challenge, the Board continues to collaborate with other administrative bodies to clarify roles, authorities and responsibilities in the grievance review process, in order to better inform its various stakeholders. The CFGB does not replace existing DND or CF structures but works in conjunction with them towards the shared objective of ensuring respect for the individual rights of CF members.

Learning and Improving

The Board is an organization that thrives on learning, and it has taken valuable lessons from the challenges it has had to face in its more than two years of existence. Being able to predict the time required to conduct quality analyses of grievances, and to issue findings and recommendations based on sound legal reasoning, is crucial to conducting successful business. However, a business planning reality will always be that not all things external and internal to an organization can be predicted or controlled. Nonetheless, the Board now has sufficient history as an organization to better assess its workflow and anticipate potential future challenges.



CHAPTER 2

2002 HIGHLIGHTS

Part I: The Management Agenda

The Canadian Forces Grievance Board set an ambitious objective for fiscal-year 2002-03 to finalize a multitude of tasks that had to be completed so that the Board could be functioning at a steady-state of operations, entering its third year of existence. To achieve this objective meant that numerous essential and significant-sized projects had to be initiated and managed to completion in the line operations, i.e., legal services and grievance analysis and also the functional areas, i.e., human resources, communications, information technology, finance, and general administration.

The Board is proud to report that in spite of the many unexpected challenges it has faced as a new organization, in 2003 it will arrive at its steady-state objective as planned. By this is meant that the necessary frameworks, policies, systems, standards, controls, practices and processes will be in place for the organization to operate in a steadfast manner on an on-going basis solidly into the future.

More Efficient Grievance Operations

The Board has chosen some of its key areas of endeavour in 2002 to feature in this year's annual report to Parliament. The first is the improvements that were made in the grievance operations. In the past year, the Board concentrated its efforts on streamlining its grievance process, with the result that a new intake system and an improved case management tracking system have been instituted. These initiatives have made the Board's grievance review process more efficient and have helped establish the basis for sound performance management.

Management Improvement Plan

In keeping with the modern comptrollership framework in the government's Results for Canadians agenda, the Board conducted a capacity assessment to determine where it ranked in relation to modern management practices. This exercise led to the identification of a number of areas for improvement, providing the opportunity for the Board to develop a clearly targeted management improvement action plan. In addition, the Board volunteered to participate in shared government initiatives in the areas of risk management, integrated management controls and program evaluation, all aimed at improving management practices across government.

Competency Based Human Resource Management

Within its first year of existence the Board developed an integrated, competency-based human resource framework and plan and in the past year made significant progress in implementing many facets of it. To begin with, competency profiles were developed for the core operations jobs and have since been used to assess candidates. For example, a list of successful candidates now exists from which to nominate grievance officers as positions become available. Competency profiles for the majority of positions at the Board are now completed and will be used for recruitment purposes and to develop learning plans. Presently, as planned, a curriculum for training/learning is being developed, in keeping with the organization's desired culture of continuous learning. In addition, the design of an employee performance management system is underway. These initiatives are aimed at maintaining a productive and sustainable workforce, consistent with the vision contained in the Public Service's Human Resources Management Framework.

Instilling Knowledge Management

Knowledge management is a key business strategy for the Board. In an organization comprised of professional workers, the acquisition, sharing, use and retention of knowledge are key to the development and maintenance of its expertise. The Board established a number of shared databases that contain the Board's findings and recommendations, its precedents, grievance decisions by the CDS, court decisions, legal opinions and the Board's entire case inventory from the first day it began operations. Thus, employees have at their disposal all the benefits of vast sources of electronically stored information to facilitate their work. Perhaps even more importantly, employees are encouraged to share existing information and any newly acquired knowledge on an on-going basis, in order to augment the organization's expertise overall and to safeguard its corporate memory.

Establishing the Communications Function

As was seen in the first chapter of this report, one of the most significant challenges before the Board is to communicate with its stakeholders. As a new organization, it is to be expected that some skepticism exists in the military as to whether or not the Board will actually make a difference. In addition, given that there are a number of separate organizational bodies involved in matters related to members of the CF, a certain degree of confusion exists regarding the roles and authorities of these various bodies. Yet, prior to March 2002, the CFGB had not completed staffing its communications function, deemed critical to achieving its business objectives. However, last spring the Board was successful in recruiting a team of experienced professionals and, as a result, a strategy has now been developed which establishes the path to follow in terms of communicating with CFGB's stakeholders. The plan is currently being implemented through various communications vehicles and activi-



ties. Internal communications, equally important to the Board, also received special attention with the publishing of a regular newsletter for employees.

Uniting Staff in One Location

A final accomplishment in the management agenda that is worthy of mention is the move to a new office location in September 2002. A move of offices can often result in a time consuming and disruptive exercise, ensuing significant organization downtime. However, CFGB's move was smoothly effected and now, for the first time since the Board's creation, all employees are working together under one roof. In an all-employee session held in June 2001, the common complaint that had been made by employees was the fact that they were housed in separate buildings, a temporary measure that was required when the organization was initially set up. Being located in the same premises has helped increase efficiency in the processing of grievances and the sharing of knowledge among employees. In addition, it will help build cohesiveness among all members of the CFGB, allowing them to better work towards common objectives in accordance with the organization values they established of promoting open communication, teamwork and a spirit of collegiality.

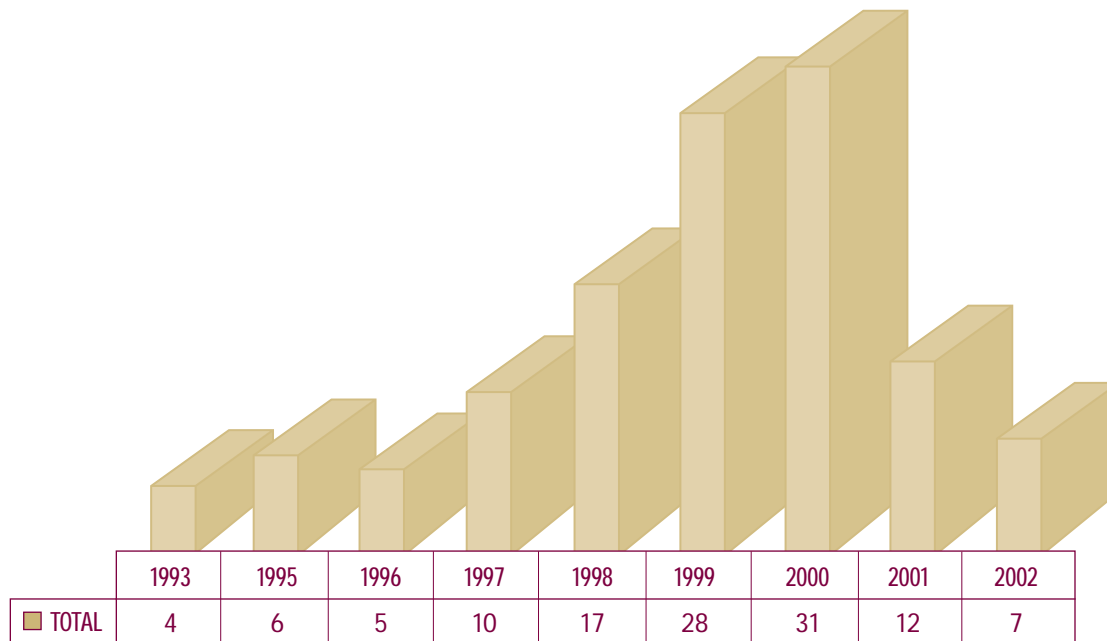


Employees of the Canadian Forces Grievance Board

Part II: Grievances Reviewed in 2002

Between 1 January 2002 and 31 December 2002, the Board made 157 recommendations and over 300 findings related to 120 grievance cases. Two hundred and seventy-five grievance cases were still under review with the Board at year-end.

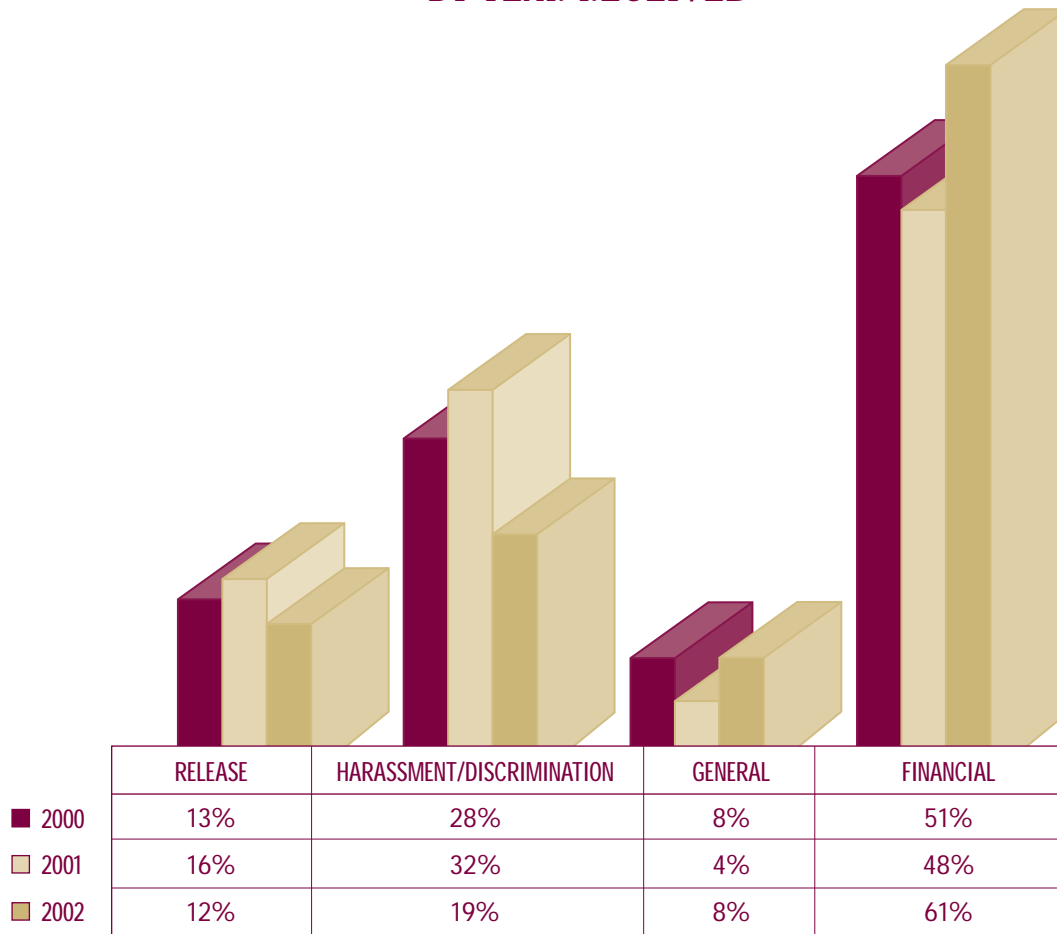
*TOTAL NUMBER OF COMPLETED REVIEWS FOR 2002
BY YEAR OF GRIEVANCE FILED*



The total number of grievances received at the Board in 2002 was 210. Of that total, 129 dealt with financial matters; 39 with harassment and/or discrimination; 26 with releases; and 16 with general matters (medical/dental, reversion in rank, etc.) A further breakdown of these grievance categories for the year 2002 can be found in Appendix 2.



*DISTRIBUTION BY CATEGORY OF CASES
BY YEAR RECEIVED*



Part III: Report on Systemic Issues

Systemic issues raised by the Board have touched on a broad range of matters from procedural fairness, to the treatment of Reservists in comparison with their counterparts in the Regular Force, to entitlement to various allowances and benefits. The following provides a few examples of the recommendations made by the Board that the CDS asked DND authorities to examine in the year 2002.

Reserve Issues

In one case reviewed by the Board, the regulation would not allow the grievor (a Reservist on a Class B contract) to be entitled to a Posting Allowance (PA). The regulation entitles only members of the Regular Force and members of the Reserve Force on Class C service to benefit from the PA. The Board found that the grievor

did not meet the criteria of the regulation but recommended to the CDS that a study be undertaken regarding Reservists serving full time with the Regular Force. As a result, the CDS requested a study to compare the terms of service of Reservists with those of their Regular Force counterparts. The CDS asked those conducting the study to make appropriate recommendations, in light of the fact that some Reservists serve on a full-time basis for an extended duration alongside members of the Regular Force.

On a similar issue, in another case, the Board recommended that the CDS consider reviewing the eligibility criteria for a PA regarding Class B reservists transferring from the Reserve Force to the Regular Force when, for example, such transfers serve the interests of the CF. The CFGB was subsequently informed that the PA Policy is being reviewed in the context of a study on Reserve Force eligibility along with another policy review related to the Canadian Forces Integrated Relocation Program. The CFGB was further informed that the new Reserve Force employment framework, to be implemented April 1, 2003, requires a redefinition of Class B and Class C service. These actions should address the policy issues related to the PA itself, and will re-define the terms of service for Reservists.

In another case, in addition to the main point of contention, the Board identified several systemic issues. The CFGB recommended the development of a more detailed policy on recognition of Reserve service which would encompass all transfers from the Reserve Force to the Regular Force, would distinguish between entry-level pay and incentive pay and would determine and recognize Reserve rank and experience, in order to avoid confusion between these different issues for members of the military, and to ensure that Reservists receive fair pay when transferring to the Regular Force. The Board further recommended that the policy behind the interpretation of the regulation, dealing with the officer training plan for members with former service, be reviewed to determine if the exclusion of certain Reservists, such as in the case of this specific grievance, was truly the intent of the regulation. Finally, the Board also recommended that the CF amend both their official documents and their internal administrative procedures to distinguish between a transfer and an enrolment, in conformity with the NDA.



Allowances

In two cases the grievors questioned the fairness of the fact that a new Home Leave Travel Allowance (HLTA) benefited some, but not all of the personnel on mission to Bosnia. The HLTA expanded the reimbursement of travel expenses for CF members, but was effective on a date that resulted in benefiting only some members of the deployed personnel. The grievors submitted that the change should have applied to all personnel on the rotation, and asked that their respective travel expenses be reimbursed according to the new policy. The Board recommended that in future, the various circumstances of CF personnel be taken into consideration by the relevant authorities when determining changes in policy.

Procedural Fairness

The Board examined the issue of disclosure in a case where the grievor was contesting his release from the Forces. The grievor indicated he had to make requests in accordance with the *Access to Information Act* and the *Privacy Act* to obtain all documentation pertaining to his grievance. The Board found that both DND and the CF did not fully respect the principles of disclosure in the grievance process. The Board recommended that the actual disclosure process respect the legislation and the rules of natural justice. Furthermore, the Board recommended that this procedure be published and broadly distributed to allow all those involved in the grievance process to be aware of it and to respect it.

In another case, the Board found that procedural fairness was lacking in the handling of the grievance by the chain of command. Most notably, the Board found that the right to be heard was infringed by not hearing the grievor, not advising him of his right to an Assisting Officer, not providing disclosure of documents, and not properly investigating the grievance. The grievor suffered damage to his career because of the way his grievance was handled. The Board recommended that renewed attention be directed at respecting procedural fairness for members who undergo the grievance process.

Lack of Information

The Board has seen that many grievances are often the result of the lack of information provided by the CF to its members. In most cases, the Board recommended to the CDS that the grievance be denied because the regulation had been respected but the grievor was not aware of his/her entitlements. For example, in one case the Board recommended that in matters involving Quality of Life issues, particularly the implementation of any changes in housing and living allowances, CF authorities fully publicize and explain in detail the consequences of these changes for CF members.

Ensuring Fairness

The few examples provided in this section of the report show that the concept of fair treatment for members of the military applies in many different ways. For example, as has been seen, procedural fairness is, in many cases, as important as resolving the grievance itself and the obligation of an administrative tribunal is to ensure that the principles of procedural fairness are respected, in accordance with the rules of natural justice.

Having an independent body review grievances affords a degree of insight and clarity on systemic issues that may not be as readily evident to those who work daily with the regulations, policies and the internal administrative processes that govern members of the military. This objective perspective ensures fairness in many aspects and is thus invaluable in the review process, as is being proved through the work of the Canadian Forces Grievance Board.



CHAPTER 3

THE ROAD AHEAD

The Board's primary task is to review grievances, however, a number of essential activities must be constantly managed in parallel, to properly carry out its mandate. This can best be appreciated by viewing the Board's results chain, as illustrated in Appendix 7. It clearly shows the linkages between the Board's investments, activities, outputs and intended outcomes.

In the midst of managing its everyday operations the upcoming legislation review will be an important endeavor for the Board in the year 2003. In addition, the Board will be concentrating its efforts in five key strategic areas, discussed in this chapter, while remaining focussed on its outputs and outcomes, in order to achieve its intended results for Canadians.

Legislation Review

In accordance with the government's plan to review the *National Defence Act* five years after it was last revised and amended in 1998, the review is expected to commence in early 2003 and be completed by next fall. Since the Act contains the legislation that created the Board, it will be essential that the Board play a meaningful role in this exercise. The fundamental *raison d'être* for the Board still remains to ensure the independent, fair, impartial, transparent and expeditious review of grievances referred under the NDA.

Performance Management

One of the Board's key strategic thrusts has been to put in place a means of monitoring and measuring the Board's performance against its organizational objectives and planned results, in order to be able to systematically determine if it accomplished what it set out to do. By the end of fiscal year 2002-03, the Board intends to have in place all the essential elements that are necessary to manage its performance in an integrated way.

A number of mechanisms have been identified in the Board's 2002-03 Report on Plans and Priorities to enable it to monitor its performance. The Board has now been operational for two years and in 2003, when the Board's next annual performance report comes due, the CFGB will be conducting a mid-term assessment of the progress it has made to date. This will be an important marking point in the Board's existence.

Appropriate performance measurement criteria will be established so that when the Board's annual performance report comes due at the five-year mark, i.e., the summer of 2005, the Board will have access to all the pertinent information needed so that a formal program evaluation can be conducted. At that point in time, the CFGB will have a significant enough history behind it to evaluate its overall effectiveness as an independent organization providing fair, equitable, transparent and expeditious findings and recommendations on military grievances.

Modern Comptrollership

Another important area of work for the Board is in line with the government's modern comptrollership initiative. None of the Board's work could be accomplished without a sound management framework in place.

Board management strongly supports this government-wide initiative and has identified several priority actions to align the Board's practices with modern management practices. In this respect the Board is participating in several cluster groups, involving different departments and/or agencies, the purpose of which is to study various issues such as risk management, integrated management controls and the evaluation function in small agencies.

The Board has established a modern comptrollership action plan and each year the Board will be refining its management practices, in keeping with another one of its key strategic thrusts, namely, effective leadership.

Professional Development

Given that the Board is a knowledge-based organization, it recognizes that capitalizing on the intellectual resources of its employees is key to achieving the organization's objectives. It is for this reason that one of its prime investments will be in the area of continuous learning.

The Clerk of the Privy Council has made learning a top priority for federal government workers. The Board is pleased to be supporting the government's new learning policy, which is resoundingly in line with its own professional development strategic thrust. By the end of fiscal year 2003-04, each permanent employee, who so desires, will have an individual learning plan to follow and this will further the Board's aim of instilling a continuous learning culture in the organization.



Knowledge Management and Communication

Actions emerging from the aforementioned two strategic thrusts will develop and evolve in tandem, as explained below.

Knowledge management will continue as a key thrust at the Board. A large amount of information related to the Board's work is available externally and internally to the Board. This information becomes valuable knowledge when it is harnessed and used by employees to further the work of the organization. And that knowledge becomes more valuable the more it is shared. This allows the organization as a whole to learn, to adapt and to become better at what it does. Thus, communication, both informal and formal is essential to ensuring that the Board optimally uses the information at its disposal to support and advance the Board's objectives.

When the Board was created in the year 2000 it recognized, at the outset, that establishing credibility among its stakeholders was critical to its success. The primary aim of the Board's external communications strategy is to make the work of the Board known. Various communication initiatives will be implemented to develop a greater awareness among members of the Canadian Forces of the Board's existence and to demonstrate how it is contributing to the improved grievance review process in the military.

Moving Forward

The Board has made an interesting journey since its 2000 inauguration. In that time, it has matured in several key areas: from being a new organization to one that has reached a reliable state of operations; implementing effective stewardship practices; developing excellence and expertise in the area of grievance analysis while upholding fairness, transparency and impartiality; contributing to improved staff relations in the Canadian Forces and fostering an organizational culture of continuous learning. It has not been without its challenges however, but lessons have been learned, relationships have been forged and results have been achieved. And when future challenges rise up to test the Board, they will be met with additional experience, expertise and an undaunted sense of purpose.

More than two years later, the Board stands firm in its belief that it will have a positive impact on the improved grievance resolution process and on the conditions of work for military personnel. Its guiding principles remain its mission, vision and values (Appendix 1) all from which flow the strategies that will bring the organization into 2003-04 and beyond.

APPENDIX 1

MISSION, VISION AND VALUES

Mission

To review grievances fairly, impartially, in a timely manner, and as informally as possible, in order to contribute to an improved grievance resolution process in the Canadian forces.

Vision

The Board's grievance review skills and expertise will be recognized through the quality of its findings and recommendations.

This will be realized when:

- The principles of integrity and fairness guiding the Board create a climate of confidence in members of the Canadian Forces;
- Members of the Canadian Forces are confident that the Board's findings and recommendations are objective, timely, fair and impartial;
- The work of the Board has a positive impact on the conditions of work of military personnel and contributes to a better understanding and application of regulations, policies, and guidelines;
- Other public agencies, in Canada and abroad, consult the Board regarding their own grievance management and review processes.

Organizational Values

- Provide efficient quality service that is impartial and fair;
- Treat individuals with respect and professionalism;
- Establish a learning environment while ensuring accountability and creativity;
- Value its personnel;
- Promote open communication, teamwork and a spirit of collegiality with a view to achieving a common goal;
- Respect the role and contribution of the military to Canadian society.



Individual Values

- Carry out work with integrity, professionalism, and loyalty;
- Promote communication, teamwork and respect for others;
- Respect the principles regarding confidentiality and absence of conflict of interest;
- Seek to develop knowledge and skills.

APPENDIX 2

BREAKDOWN OF GRIEVANCE FILES BY CATEGORY

From 1 January 2002 to 31 December 2002, the Board received 210 cases

CATEGORY	TOTAL
Financial	129
General	16
Harassment-Discrimination	39
Release	26
TOTAL	210

Breakdown of Grievance files by category

FINANCIAL	TOTAL
Allowances	18
Benefits	22
Other	16
Pay	19
Pension	5
No Subcategory	49
FINANCIAL TOTAL	129
GENERAL	TOTAL
Medical-Dental	1
Other	7
Other career action	8
GENERAL TOTAL	16

HARASSMENT/DISCRIMINATION	TOTAL
Abuse of authority	7
Other	14
Sexual	1
No Subcategory	17
HARASSMENT/DISCRIMINATION TOTAL	39
RELEASE	TOTAL
Medical	2
Other	2
Service completed	1
Universality of Service	1
Unsatisfactory service	1
Voluntary	1
No Subcategory	20
RELEASE TOTAL	26
GRAND TOTAL	210



APPENDIX 3

A SAMPLE OF CASE STUDIES AND BOARD FINDINGS AND RECOMMENDATIONS

Case Summary

1

Intended Place of Residence (IPR) and Integrated Relocation Pilot Program (IRPP)

The grievor had been posted outside of the country from 1997 to 1999. The grievor was informed that, since he was reaching his compulsory retirement age and was not posted in Canada, he had to return to Canada for release purposes. The grievor alleged that he was advised by the CF that to initiate the release proceedings, he could proceed to Toronto, Kingston or Ottawa, and then elect an Intended Place of Residence (IPR). Or, he could move directly to his IPR. Having purchased a house in the Halifax area, the grievor insisted that he be posted to Halifax for release proceedings. His request was denied. He then chose to elect his IPR and moved to Halifax.

The grievor filed a grievance. He alleged that for release purposes, he should have been posted to Halifax, and should not have been forced to use his IPR benefits to move to Halifax. As redress, he requested that his IPR benefits be restored. He also alleged that he should have been granted a posting allowance. He should have been entitled to the benefits specified under the Integrated Relocation Pilot Program (IRPP) in relation to his move to an IPR.

Some levels of the chain of command supported the grievance. One level of review recommended that the regulations be modified to permit CF members who are released from a foreign posting to be moved to a release centre with all of the entitlements of a normal posting. This change would also permit CF members, those who are being released from a foreign posting, to be moved to their point of departure from Canada, if it is cost effective.

Another level of review did not support the grievance stating that the grievor's release proceedings had been done in accordance with the policy regarding release, *Canadian Forces Administrative Order* (CFAO) 15-2. This level said that the posting

allowance is not to be paid to CF members on their final posting for release. They argued that the grievor received the benefits related to a move on release under the IRPP. The grievance was referred to the Board.

According to QR&O 15.04, the grievor had to be released in Canada. Also, according to CFAO 15-2, the grievor's release proceedings had to be at a base nearest his place of duty. Therefore, the grievor was given three choices for his release. Since the grievor refused to be released at one of these bases, he elected, in accordance with subparagraph 2(d) of Annex B of CFAO 15-2, his IPR in Halifax. The Board found that the grievor's release proceedings were done in accordance with QR&O 15.04 and CFAO 15-2.

During the grievance process, it was argued that an inequity existed between CF members serving in the United States who request release and CF members who take are released while serving in Canada. The Board agreed that the treatment of these two categories of CF members is not the same, but this does not imply that the difference constitutes an inequity. The Board found that the general requirement to release CF members in Canada necessitates treating these members differently than members serving in Canada at the time of their release.

Since the grievor moved to his IPR, the Board found that, according to QR&O 205.42, the grievor was not entitled to a posting allowance.

Regarding the grievor's entitlements under the IRPP, since the grievor confirmed to the Board that he received the appropriate benefits under the IRPP, the Board found that this aspect of his grievance was settled.

The Board recommended that the CDS deny the grievance.

Although a difference in treatment resulting from the necessity of releasing CF members in Canada is unavoidable, the Board recommended that the CDS review the applicable policies with the view to providing greater choice of place of release to CF members returning from a foreign posting.

The CDS concurred with these findings and recommendations. With regard to the staff issue, the CDS asked the Assistant Deputy Minister (Human Resources-Military) [ADM (HR-Mil)] to consider the Board's findings and recommendations and report back to him in due course.



Reimbursement for Laser Eye Surgery

The grievor made a personal decision, without the CF's requirement or sanction, to undergo Photo Refractive Keratectomy (PRK) laser eye surgery in 1998. He later filed for redress, believing himself wronged in being made to pay for the surgery out of his own pocket. The grievor contested having to pay for PRK laser eye surgery, alleging that CF policy regarding the non-payment of laser eye surgery was outdated. As redress, he sought reimbursement of the cost of the surgery and eye drops.

The grievor alleged that Medical Directive 3/92, stating that laser eye surgery is medically unnecessary, and more generally, that information given about advances in medical science was antiquated, and did not reflect the information and services currently available to the general public. The grievor argued that since his eye surgery, he became a more versatile and effective member of the CF, and that the procedure would save the CF more money in the long run than if he had not elected to have the procedure done. He also noted that other elective surgeries and medicine covered by CF medical benefits cost far more than his surgery did, but benefit the CF less.

There was some support for the grievance in the chain of command. One level expressed its support for the grievance in principle, and stated that a review of the applicable medical policy should take place. Another level added that, once the review had been completed, the grievor's case should be re-addressed, to determine if any redress could be made.

Other levels of command did not support the grievance, for a variety of reasons. One level noted that the grievor's cost-effectiveness argument was not convincing, and that the Maritime Forces Pacific (MARPAF) Surgeon had examined laser eye surgery and had not deemed it cost effective. Another level stated that the comparison between PRK and other forms of elective surgery was not valid, noting that elective surgeries covered by the CF were considered to be the safest and most effective way to treat the medical condition they were developed to treat. Corrective lenses, not eye surgery, were considered the most effective treatment to correct vision. A third level stated that the CF had conducted a thorough review of laser eye surgery, and it had been found to be an experimental procedure, cosmetic in nature. This level also noted that no provincial or Public Service health plan covered the cost of PRK laser eye surgery, and that no long term studies had been done to verify its safety.

The Board found that military members should receive as good and as extensive health services as civilians. Notwithstanding, it has been the CF's policy not to reimburse the costs associated with laser eye surgery, because it is considered experimental, cosmetic and not cost-effective.

The Board found that the CF adhered to its policy in refusing to pay the costs of laser eye surgery. It noted that the issue had been thoroughly assessed by CF medical staff, had been deemed experimental and cosmetic in nature, and had consequently been left out of the Spectrum of Care.

The Board recommended that the grievance be denied for the following reasons:

1. The procedure was expressly excluded by CF policy, unless specifically required by the CF;
2. The procedure had not been authorized or required by the CF;
3. The procedure is not covered by any provincial health plan or by the Public Service Health Care Plan;
4. The procedure is not similar to elective surgeries already covered by the CF, which are considered the safest and most cost-effective way to treat the medical condition they were developed for. Corrective lenses are considered the safest and most effective treatment to correct vision;
5. The procedure is deemed experimental;
6. The principles set out in the Spectrum of Care dictate using the safest and most cost-effective treatment – in this case, corrective lenses.

The CDS concurred with the Board's findings and recommendations.



Home Equity Assistance Plan (HEAP)

In 1991, the grievor purchased a house in Kingston. In 1994 he was posted to another location and sold his house, incurring a home equity loss. The grievor filed a Home Equity Assistance Plan (HEAP) claim. He alleged that although he did not lose 10% of his home equity, the loss of \$9,500 caused him financial hardship. The claim was denied because the grievor did not demonstrate a decline of 10% in the housing prices in Kingston between 1991 and 1994.

The grievor filed a grievance only in 1999. He alleged that the reason he did not grieve the negative decision in 1995 was his understanding that other Canadian Forces members in Kingston who were in the same situation had grieved similar decisions without success. The grievor alleged that under HEAP, he should be reimbursed the \$9,500 home equity loss he incurred in 1994.

There was some support for the grievance in the chain of command. However, some levels did not support the grievance, stating that the grievance was submitted beyond the time limit established by the QR&O article 19.26, and that the grievor's HEAP claim was denied because he failed to demonstrate a 10% market decline for similar homes in the neighbourhood over his period of ownership. Regarding the grievor's claim of undue financial hardship, it was concluded that the grievor did not suffer an injustice compared to others in a similar situation. The grievance was then referred to the Board.

The Board noted that, in reviewing the grievance, the grievor's CO did not mention that the grievance had been filed beyond the one-year time limit. The Board found that, by dealing with the grievance, the CO implicitly exercised his discretion to waive the time limitation.

Based on the documentation on file, the Board found that the grievor did not demonstrate that the housing prices in Kingston had decreased by 10% or more between the date of purchase and the date of sale of his principal residence.

Finally, the Board analysed the evidence provided by the grievor in support of his claim of undue financial hardship. The grievor alleged that: a) he and his wife saved several years for the down payment on their Kingston house; b) he suffered a \$9,500 equity loss when, because of service requirements, he was compelled to sell the house during a poor market; c) after suffering the equity loss in Kingston, they had to live in PMQs for four and one-half years before they could afford to get back into the market again; and d) the introduction of the Integrated Relocation Pilot

Program, which does not require a 10% market decline, is evidence that there were serious shortcomings with the HEAP. The grievor argued the senior leadership had acknowledged these problems.

The Board found that the grievor was treated in a fair and equitable manner in accordance with the regulations in effect at the time of the HEAP claim. The Board considered that the loss suffered by the grievor, while painful and unfortunate, was not of such magnitude as to constitute “undue financial hardship”. The Board did not find that this hardship should be compensated under paragraph 7 of QR&O article 209.97.

The Board recommended that the CDS deny the grievance.

The CDS concurred with these findings and recommendations.



Eligibility for Pilot Terminable Allowance (PTA)

The grievor alleged that he was the victim of age discrimination because a criterion for the Pilot Terminable Allowance (PTA) stipulated that eligible pilots have less than twenty-three years of full-time paid service. The PTA was a monetary benefit given to pilots who undertook to continue to serve in the CF for a period of five years. The benefit was meant to reduce the attrition rate in selected segments of the pilot population. The grievor had over twenty-four years of service when the benefit was implemented. He was therefore ineligible for the benefit. The grievor alleged that the PTA discriminated on the basis of age. He calculated that exclusion from this benefit began at the age of forty years, and that this exclusion negatively affected older pilots. He alleged that this result constituted adverse impact discrimination.

The CF chain of command did not support the grievance, arguing either that no business case could be made that could justify paying the PTA to pilots with more than twenty-three years of service, or simply that there was no discrimination. It was contended that there could be no discrimination because the criterion was based on years of service, not age. It was also noted that the fact that some pilots over forty years of age received the benefit militated against a finding of age discrimination.

The Board recalled that the definition of discrimination is a distinction based on a personal characteristic that has the effect of imposing a burden on an individual or group that is not imposed on others. Human rights are to be given a liberal interpretation; thus, to exclude the grievor's argument that he was discriminated on the basis of age because his years of service were not equivalent to age would be an affront to this principle.

However, the Board found that the grievor could not establish a *prima facie* case of discrimination based on age because there were no legitimate grounds upon which to compare pilots with more than twenty-three years of service with those with less than twenty-three years of service. The Board found that it was not only persons older than forty years of age who were ineligible for the benefit and that the discrimination between those eligible and those ineligible was not based on age. Consequently, the Board found no *prima facie* case of age discrimination. The Board recommended that the grievance be denied.

The CDS concurred with the findings and recommendations.

Wrongful Dismissal

The grievor had pled guilty to several counts of fraudulent use of stolen credit cards. As a result, he received a 10 months' suspended sentence of imprisonment on each of the counts, a fine of \$1,500, a victim fine surcharge of \$5 for each count, plus 180 hours of community service and three years' probation.

Given his conviction in criminal court, the grievor was released from the CF pursuant to item 2(a) of the QR&O 15.01. The grievor objected to the way he was released; he requested that the release be withdrawn and that the grounds on which he was released be changed.

The grievor argued that the ground of unsatisfactory conduct was vague and open to liberal interpretation. He maintained that his performance at work, his satisfactory performance rating, the positions of trust he had held, along with consistent recommendations and praise for his professionalism by his superiors, warranted that he be re-instated.

In short, he regarded the termination of his employment as an injustice. He also felt that he was the victim of pressure by his colleagues at work.

He alleged that his release was contrary to section 18.2 of the *Quebec Charter of Human Rights and Freedoms*¹, that his convictions had no connection with his employment in the CF, and that he had served his sentence on his own time. He also raised the issue of discrimination in that other servicemen had, in his judgment, received better treatment while having performed unsatisfactorily.

None of the levels in the chain of command supported the grievor.

The use of item 2(a) in the release was deemed justifiable, given that it accurately reflected the grievor's situation, and was neither vague nor inappropriate.

As for the blame that the grievor sought to cast on his companions, there was no place for such allegations because it was tantamount to reopening a trial in which the verdict had the status of *res judicata*. The grievor, who was represented by counsel at trial, should have raised these points in that forum if he believed that they constituted a valid ground of defence.

¹ L.R.Q.c. C-12



Further to this, the allegation that his release was contrary to section 18.2 of the *Quebec Charter* was deemed irrelevant because the CF falls solely within federal jurisdiction and the *Quebec Charter* does not apply to the CF.

The Board concluded that the grievor was treated fairly throughout, beginning with the laying of charges and ending with his release. It found that there was no basis for the grievance, and that the CF acted reasonably in releasing the grievor under item 2(a) of article QR&O 15.01.

The Board recommended that the CDS deny the grievance.

The CDS concurred with the Board's findings and recommendations.

Recognition of Prior Service in the Reserve Force

During a seven-month period in 1996, the grievor claimed to have lost out on pay he should have received. He has been transferred from the Reserve Force to the Regular Force, and paid as an Officer Candidate Training Plan (OCTP) Lt with no former service as opposed to as an OCTP Lt with former service. He claimed a loss of \$3,178.00 plus interest. Repeated attempts to resolve the issue failed, resulting in his submitting a grievance.

The grievor demanded that his prior Regular and Reserve Force service be recognized for pay purposes and that he be paid pursuant to QR&O article 204.21535 as of the date of his transfer into the Regular Force, plus interest.

There was some support for the grievance in the chain of command. Some believed that the grievor's former service had not been properly recognized and he had clearly been paid under the wrong provision of the QR&Os. Other levels in the chain of command did not support the grievance, however, on the grounds that QR&O article 204.21535 only applies to prior Regular Force service. They suggested that the CDS use his discretion pursuant to QR&O 204.015 to grant a higher incentive pay on enrolment.

The Board found that the grievor, formerly an NCM in the rank of Corporal in the Primary Reserve when he was commissioned in 1991, was appointed to the rank of officer cadet directly from a non-commissioned rank under the Reserve Officer Pilot Training Plan. It also found, on the basis of the facts disclosed by the grievor and supported by his unit and superiors, that the grievor was commissioned from the ranks to Officer Cadet, had successfully completed Basic Flying in 1993, Multi-engine and Basic Pilot in 1994, and had been employed on a full time basis since 1991 as a Class B reservist.

The Board found that the CDS has the authority and discretion, pursuant to QR&O 204.015, to award a higher pay incentive to the grievor in light of his previous Reserve service.

The Board recommended that the CDS exercise his authority pursuant to QR&O 204.015 to grant the grievor a pay incentive level within the table to article 204.2153 (retroactive to May 1, 1996). This pay would not be lower than the pay he was receiving prior to his transfer from the Reserve Force into the Regular Force. It would also be commensurate with the pay of a Regular Force pilot of the same rank, qualifications (academic, civil and military), and experience.



The Board did not recommend that interest be paid given the absence of legal authority.

The Board further recommended that the grievance be satisfied immediately, without waiting for the outcome of the forthcoming studies on CF pay policy. Another delay would cause the grievor another injustice. In addition, these studies would not result in retroactively applicable regulations.

The Board recommended that a single entry pay regulation with a broader scope and more flexibility to adapt pay to past qualifications and experience or merit be considered by one of the study teams (yet) to be created.

The CDS concurred with the Board's findings and recommendations, granting the grievor an incentive pay closest to, but not lower than, the pay the grievor had been receiving prior to his transfer. The CDS also requested that ADM (HR-Mil) consider the broader issues raised.

Harassment

The grievor was posted to a CF base as Base Personnel Services Officer. He reported to the Base Commander. A proposed restructuring of the base was put forward shortly afterwards, which involved amalgamating the grievor's position with another. The Base Commander wanted an Army officer in the new position, whereas the grievor belonged to the Air Force.

The grievor's performance evaluation report (PER) for that year categorized his performance as "normal", but included some negative comments. The grievor refused to sign it. He was subsequently posted out of the area.

The grievor claims that his Base Commander harassed him by using strong language that he knew would offend the grievor's religious beliefs, belittled him in public, and intimidated him for belonging to the Air Force. He also contested his PER, stating that an unjustified mediocre score and his posting out of the area were the consequences of the Base Commander's harassment.

There was some support for this grievance in the chain of command. The CF's position was that the grievor was not harassed *per se*, but that the Base Commander had used language that was unacceptable in the grievor's and others' company. The Commander was counselled for his use of strong language, sent a written apology to the grievor, and rewrote the PER. Although there were slightly higher ratings and new positive comments in the new PER, the overall score remained the same. The grievor rejected these results, stating that he sought three things: an end to the Base Commander's "reign of abuse", an outstanding PER and an *ex gratia* payment for wrongful posting.

A formal Board of Inquiry was convened within the CF to investigate the allegations. It made 12 recommendations, including:

1. That the Base Commander be put on counselling and probation for leadership deficiencies;
2. That the Base Commander apologize to the grievor and two others he was found to have harassed;
3. That the grievor's PER be regarded as an anomaly by future merit boards;
4. That a supplementary merit board be convened with respect to the grievor's PER;
5. That no *ex gratia* payment be made.

The evidence on record did not support a conclusion that the Base Commander treated the grievor out of animus related to religion, or that it had anything to do



with the grievor's affiliation with the Air Force. However, the Base Commander was given a Recorded Warning regarding the use of profanity and the harassment of subordinates. He was also ordered to write three letters of apology. The grievor was offered an administrative resolution to the grievance, which consisted of removing the offending PER and convening supplementary selection boards. The grievor declined the offer.

The Board found that the Base Commander's use of harsh language and profanity was inappropriate, and that he ought to have known it would offend the grievor. The Board found that this constituted harassment.

The Board found that the grievor's posting out of the area did not constitute unjustified or improper behaviour on the Base Commander's part, nor did it find that it constituted harassment. It also found that there was insufficient evidence to conclude that the PER constituted harassment. The evidence given at the Board of Inquiry did not make a case for the improper use of authority, nor did the evidence show a negative effect on the grievor's career.

The Board recommended that the grievance be upheld with regard to a finding that the Base Commander did harass the grievor. Since a Recorded Warning had already been issued to the Base Commander, the Board recommended that no further action be taken in this regard.

The Board also recommended that the grievor be given the opportunity to accept the administrative resolution previously offered; this measure would, to some extent, ensure that the grievor was placed as closely as possible to the position he would have been in had he not received the PER from the Base commander.

Regarding the grievor's claim for damages, the Board recommended that the relevant authorities deal with this matter, in accordance with the CDS' decision on the merits of the grievance.

The CDS concurred with the Board's findings and recommendations, concluding that the appropriate corrective action had been directed and executed, and that the administrative resolution offered was fair and equitable. The issue of the claims for damages was sent to the Director Claims and Civil Litigation for assessment of compensation, if appropriate.

APPENDIX 4

ANTICIPATED EXPENDITURES TO MARCH 31ST, 2003

Total Anticipated Expenditures to March 31st, 2003

	Forecast (Total Expenditures)
Salaries	3,355,000
Employee Benefit Plans	671,000
Travel & Transportation	90,400
Telecommunication Services	233,000
Postage & Freight	13,250
Communications & Printing	30,500
Professional and Special Services	3,423,000
Training & Professional Dues	45,500
Rentals	60,000
Office Rent & Fit-up	502,000
Materials & Supplies	64,000
Computer & EDP equipment	353,000
Office Furniture	302,000
Information Technology/Information Management	316,000
TOTAL	9,458,650



APPENDIX 5

CFGB ORGANIZATION AND STRUCTURE

Mr. Paul-André Massé is the Chairperson and Chief Executive Officer of the Board; Ms. Diane Laurin is the full-time Vice-Chairperson, responsible for Operations; Mr. Kenneth Maxted (Toronto, Ontario) is the part-time Vice-Chairperson and Ms. Naomi Z. Levine (Headingley, Manitoba), Ms. Wendy E. Wadden (Sydney, Nova Scotia), and Mr. Michel Crowe (Montreal, Quebec) are part-time Members. All Members are Order in Council appointees. The role of the Board Members is to provide findings and recommendations on grievances to the Chief of the Defence Staff.

Ms. Laurin is responsible for assigning the grievance cases to the Board Members, as well as overseeing the Board's grievance review operations, i.e., research and analyses, legal services, and the recommendation process concerning CF members' grievances.

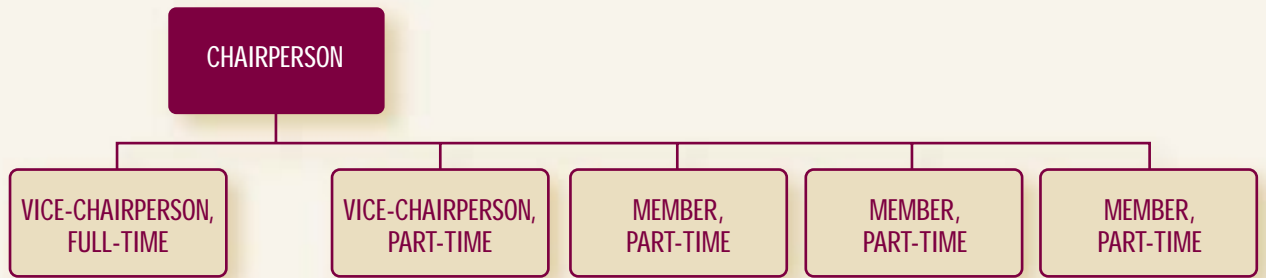
In their executive duties, the Chairperson and Vice-Chairperson are supported by an Executive Director, a Director of Legal Services and General Counsel and a Director of Grievance Analysis and Operations.

The Executive Director is responsible for the provision of corporate services in the areas of Strategic Planning and Administration, Human Resources, Communications, Finance, Information Management and Technology and Health and Safety.

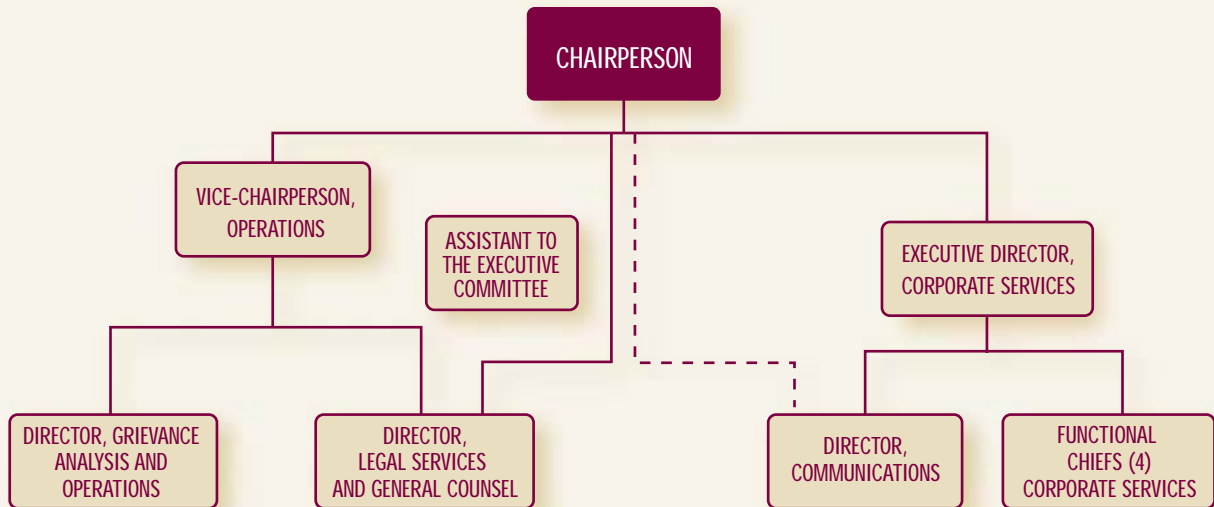
A team of Legal Counsel is employed in the Legal Services Directorate, which is headed by a Director, who also acts as General Counsel to the Board. This Directorate houses the Registrar function for grievances.

The Grievance Analysis and Operations Directorate consists of a core group of Grievance Officers, supplemented by either term, casual or contract employees, as warranted by the workload.

BOARD MEMBERS



THE MANAGEMENT TEAM



APPENDIX 6

BIOGRAPHIES

Mr. Paul-André Massé was appointed as the Canadian Forces Grievance Board's first Chairperson on November 1, 1999.

Mr. Massé is responsible for setting up the Canadian Forces Grievance Board, the first quasi-judicial body mandated to review military grievances referred to it by the Chief of the Defence Staff.

Born in Saint-Jean-sur-Richelieu, Mr. Massé is a graduate of l'Université de Montréal where he obtained a Master of Science degree (Political Science), and of the University of Ottawa where he pursued undergraduate studies in Public Administration, Political Science and Labour Relations.

He was a member of the Canadian Armed Forces (Regular and Reserves) from 1964 to 1973, following which he held positions in both Members of Parliament and Ministers' Offices.

Member of Parliament for Saint-Jean from 1979 to 1984, Mr. Massé also served as Vice-Chair of the Labour, Manpower and Immigration Committee; and as member of the Standing Committees on External Affairs and National Defence; Agriculture; Public Accounts and Miscellaneous Estimates.

Mr. Massé was actively involved with Sub-Committees reviewing the NORAD Agreement and the development of the Armed Forces Reserves. He was also involved, at the legislative level, in the implementation of the Canadian Security Intelligence Service that became the subject of his thesis.

In 1983, he was appointed by the Prime Minister as Parliamentary Secretary to the Minister of Supply and Services.

On many occasions, as member of Parliamentary Delegations, he has represented Canada abroad particularly at NATO, SHAPE and NORAD.



Paul-André Massé
Chairperson

As part of a Public Service management development program with the Canadian Centre for Management Development, Mr. Massé held various positions of increasing responsibilities within the federal administration.

From 1992 to 1994, Mr. Massé was a member of the Board of Directors of the "Cégep de Saint-Jean-sur-Richelieu" and a member of its Executive Committee and Finance Committee.

Prior to his appointment as the Canadian Forces Grievance Board's Chairman in November 1999, Mr. Massé managed his own consulting firm in the field of government Relations.

Ms. Diane Laurin, LL.L was appointed as the Canadian Forces Grievance Board's full-time Vice-Chairperson on November 1, 1999.

Ms. Laurin is the co-founder of the Canadian Forces Grievance Board; the first quasi-judicial body mandated to review military grievances referred to it by the Chief of the Defence Staff.

As Vice-Chairperson, Grievance and Legal Operations, she establishes and manages the investigation, legal review and adjudication process of formal grievances from members of the Canadian Forces (CF). This is achieved through the oversight of the quasi-judicial functions of the Board and the review of findings to ensure that recommendations to the Chief of the Defence Staff (CDS) respect the rights of military personnel and Canadian Law.



Diane Laurin
Vice-Chair

Ms. Laurin has a Bachelor of Law degree from the University of Montreal (1982) and has been a member of the Quebec Bar Association since 1983. She began her career as a nurse, a profession she practiced for six years.

Prior to joining the Grievance Board, Ms. Laurin worked at the Montreal Urban Community (MUC) as a member of senior management for eleven years, four of which were spent at the Montreal Urban Community Police Service (MUCPS).



Ms. Laurin was Assistant-Director and Chief of Staff to the Director of the Police Service from 1995 to 1998. She participated in major files involving citizen security, public morality and criminal activity, as well as intercultural and race relations. Some examples are the ice storm, the Stanley Cup riots, the motorcycle gang wars and the Barnabé Case.

Ms. Laurin also took part in several projects touching upon collective agreement negotiations, work relations and professional ethics.

She participated in a project called “Towards Neighbourhood Policing” which necessitated the re-engineering of the MUCPS and led the department to thoroughly review its mission and work practices.

From 1987 to 1995, Ms. Laurin acted as Communications and Planning Advisor to the MUC President. In this capacity, she planned communications strategies that furthered the implementation of metropolitan policies in matters of public safety, air and water purification, public transit and economic development. She also participated in the preparation of many papers on issues such as prevention and law reform in the police environment.

Before joining the MUC, Ms. Laurin, among other things, practiced immigration and civil law.

Kenneth E. Maxted was appointed as part-time Vice-Chairperson of the Board on May 31, 2001. Mr. Maxted, from Toronto, Ontario, has 30 years experience as a Parish Priest and 38 years of military service.

During his military career, the Reverend Canon Maxted served for 10 years as a Regular Force Infantry Officer and 28 years in the Reserves, of which 15 were served as Chaplain to the Canadian Forces. He also acted as Aide-de-Camp to four Lieutenant Governors of Ontario, and has served as Chaplain to several veterans' organizations.

Mr. Maxted, a former member of the Canadian Pension Commission and the Veterans Review and Appeal Board, is an Officer of the Order of Military Merit and the recipient of, among others, the United Nations Service Medal (Korea), the Centennial Medal, the Queen's Jubilee Medal and, most recently, the Canadian Peacekeeping Service Medal.



Part-Time Vice-Chair
Kenneth E. Maxted



Part-Time Member
Naomi Z. Levine

Naomi Z. Levine was appointed as part-time Member of the Board on March 21, 2000. Ms. Levine, from Headingley, Manitoba, is a lawyer, ethicist, chartered mediator and workplace dispute consultant with extensive experience in conducting inquiries. She is also a harassment consultant for the University of Winnipeg, Red River College and the City of Winnipeg. As a lawyer, Ms. Levine has specialized in, among others, the areas of criminal, labour and corporate law. She obtained a Bachelor of Arts from the University of Winnipeg and a Masters of Arts and a Bachelor of Law, from the University of Manitoba. She has a weekly radio column on Ethics and Law on CBC Winnipeg.



Part-Time Member
Wendy E. Wadden

Wendy E. Wadden was appointed as part-time Member of the Board on March 31, 2000. Ms. Wadden, from Sydney, Nova Scotia, is a lawyer in private practice. She is the head instructor in the Paralegal Program, an instructor in the School of Business and the School of Science and Technology at the University College of Cape Breton. She is Chair of the School of Business at University College of Cape Breton, and member of : the Academic Council for the University College of Cape Breton, the Ethic review Committee at UCCB, the Academic Committee, the Nova Scotia Barristers' Society, and the Cape Breton Barristers' Society. She is also a member of the board for a community organization known as "Second Chance", a program designed to assist in responding to family violence by helping the batterer. She obtained a Bachelor of Commerce (Honours) and a Bachelor of Law from Dalhousie University.

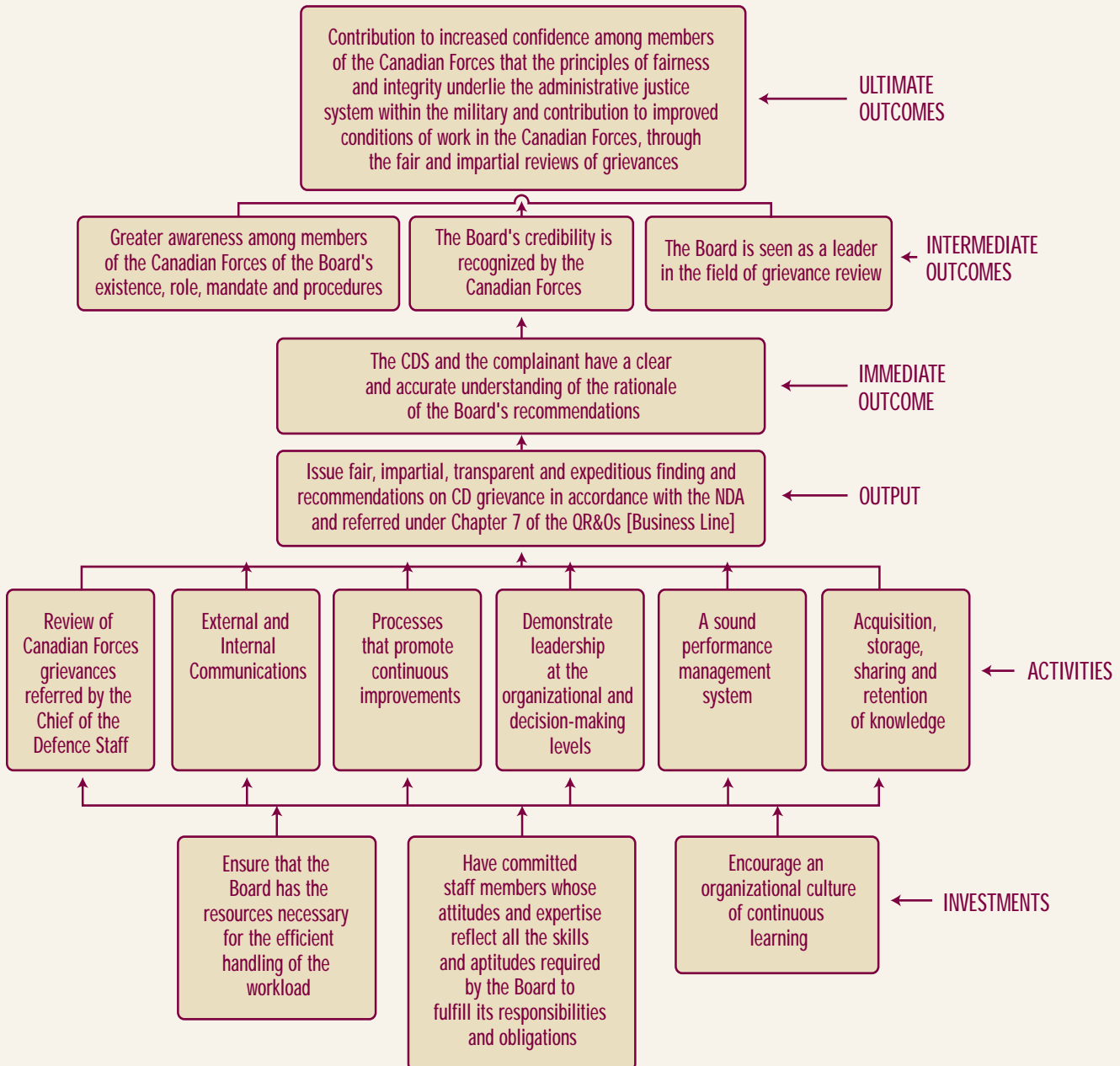


Part-Time Member
Mr. Michel Crowe

Michel Crowe studied law at the University of Montreal before being called to the Bar of Quebec in 1968. Mr. Crowe served in the Canadian Armed Forces from 1962 until the year 2000, first with the Reserve Force for five years in the Canadian Officers Training Corps, then as an infantry officer in the Regiment les Fusiliers Mont-Royal. He transferred to the Regular Force as a military lawyer with the Office of the Judge Advocate General in 1967. Responsible for regional legal offices in Europe and Quebec, he served as Assistant Judge Advocate General in Lahr, Germany, as well as in the Montreal region. Mr. Crowe headed several sub-divisions of the JAG head office at National Defense Head Quarters (NDHQ) and served as legal advisor for SHAPE (Supreme Headquarters Allied Powers Europe), where he participated in several international negotiations within NATO. He taught civil law and the laws of war at the Collège Militaire Royal of Saint-Jean-sur-Richelieu, Quebec, and continues to teach military law. Throughout his military career, Mr. Crowe has counselled on military grievances.

APPENDIX 7

RESULTS CHAIN





CONTACT

GETTING IN TOUCH WITH THE CFGB

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